

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ASHLEY FLORES, DUANE
SCHULTZ, and EMILY SCHULTZ, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DEBRA JEAN SCHULTZ,

Respondent-Appellant.

UNPUBLISHED

October 13, 2009

No. 290914

Washtenaw Circuit Court

Family Division

LC No. 2008-000111-NA

Before: Talbot, P.J., and Wilder and M. J. Kelly, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii) and (j). Because we conclude that there were no errors warranting relief, we affirm.

Respondent first argues that the trial court violated her right to procedural due process when it relied on § 19b(3)(b)(ii) as a statutory basis for termination when this ground was not specified in the petition. The trial court's reliance on a statutory ground for termination that was not cited in the petition does not violate due process, so long as "the respondent was given adequate notice of the proofs that he would have to present to overcome termination . . ." *In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992). MCL 712A.19b(3)(b)(ii) authorizes a court to terminate parental rights if "the parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home." The petition contained detailed allegations of sexual and physical abuse suffered by respondent's son and oldest daughter at the hands of respondent's live-in partners. It also specifically alleged that respondent was aware of a number of the allegations pertaining to the physical abuse of her son. We conclude that the allegations in the petition provided adequate notice of the proofs that she would need to present in order to avoid termination of her parental rights under § 19b(3)(b)(ii). Accordingly, the trial court's reliance on that statutory ground did not violate respondent's right to procedural due process.

Next, the trial court did not clearly err in finding that §§ 19b(3)(b)(ii) and (j) were both established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich at 341, 356-

357; 612 NW2d 407 (2000). The evidence showed that respondent had a succession of four live-in partners, each of whom abused her children in some manner. She resided in the home at all times during the occurrences of abuse. There were numerous indications of potential abuse during the course of the relationships that respondent either did not have the capacity to appreciate or chose to ignore. One boyfriend maintained a friendship with a person who frequently spent time with minor girls, and this boyfriend even brought respondent's children to socialize with his friend and two minor girls. Respondent admitted that the friendship was a point of contention between her and her boyfriend, but did not recognize the potential for harm to her children. Respondent's boyfriend sexually abused respondent's daughter.

Another live-in partner, Anthony Prince, tortured animals and physically abused respondent. Respondent admitted being afraid of Prince, but did not believe her children were afraid of him despite witnessing the same events. She also gave no thought to the effect on the children from witnessing Prince commit horrific acts on the family cats. When her son was burned, despite Prince's penchant for violence, she blindly accepted Prince's innocent explanation. She further failed to appreciate the effect of domestic violence on the children, even if not directly inflicted on them. At the end of each abusive relationship, respondent had an opportunity to make better choices, but did not despite warnings from numerous professionals advising her to make her children her first priority. Respondent allowed her last partner to move in with her and care for her children after having met him in person for only a few days. She believed that she knew what kind of person he was based solely on their 12-month Internet relationship. The result was that this new live-in partner sexually abused respondent's daughter.

Although respondent had made recent efforts to make different choices in the future, at the time of the hearing she had only been addressing the issues for five months—issues that took a decade to accumulate. Whether respondent was truly motivated to make better choices in the future largely rested on respondent's credibility; and this Court will defer to the trial court's credibility determinations. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We find no clear error in the trial court's determination that respondent had an opportunity to prevent her children from being abused and that it was reasonably likely that the children would be abused in the future if returned to her care.

Respondent's history of willful ignorance or inability to perceive danger signs also supports the trial court's decision with respect to § 19b(3)(j). Respondent needed time to change her pattern of behavior that was a decade in the making. The trial court did not clearly err when it found that the risk to the children that respondent would make a poor choice in the foreseeable future was too great and, for that reason, found that the children were likely to be harmed if returned to respondent's care.

Lastly, with regard to the children's best interests, there were substantial risks in returning the children to respondent's care, both physically and emotionally. The older children had been extremely traumatized and needed a stable environment to heal. Respondent had been unable to provide such a home in the past and, despite her efforts, it was questionable whether she would be able to do so in the future. Also, continued counseling was critical to the children's recovery. Respondent had shown, at best, indifference to the importance of this in her oldest child's life after that child's sexual molestation and attempted suicide. Despite the children's professed love for respondent and desire to live with her, the trial court had to consider whether respondent, with all the issues she was facing in her own right, could provide for the children's

needs. The trial court did not clearly err in determining that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5).

Affirmed.

/s/ Michael J. Talbot

/s/ Kurtis T. Wilder

/s/ Michael J. Kelly